

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE FRANCISCO GARCIA,

Defendant.

Criminal Case No. 07-MJ-2374-RBB

**FINDINGS OF FACT AND ORDER OF
DETENTION**

In accordance with § 3142(f) of the Bail Reform Act of 1984 (18 U.S.C. § 3141 *et seq.*), this Court conducted a detention hearing on October 10, 2007, to determine whether Jose Francisco Garcia (“the Defendant”) should be held in custody pending trial, on the grounds that he is a risk of flight. Assistant United States Attorney Caroline Han appeared on behalf of the United States. Holly Hanover appeared on behalf of the Defendant.

Based on the evidence proffered by the United States, the Defendant, the Pretrial Services Report, and the Complaint, the Court concludes that the following facts establish by a preponderance of the evidence that no condition or combination of conditions will reasonably assure the appearance of the Defendant as required. As such, the Court orders that the Defendant be detained pending trial.

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I.

FINDINGS OF FACT

A. Nature and Circumstances of the Offense Charged (18 U.S.C. § 3142(g)(1))

1. The Defendant is charged in Criminal Complaint No. 07-MJ-2374 with importing approximately 12.05 kilograms of methamphetamine a Schedule II Controlled Substance, in violation of 21 U.S.C. §§ 952, 960.

2. If convicted of this charge, the Defendant faces a mandatory minimum sentence of ten years, and a maximum sentence of life in prison pursuant to 21 U.S.C. § 960(b)(1).

3. Because a maximum term of imprisonment of ten years or more is prescribed for this offense in 21 U.S.C. § 960(b)(1), the presumption set forth in 18 U.S.C. § 3142(e) that no condition or combination of conditions will reasonably assure the appearance of the Defendant as required is applicable.

4. The evidence presented in accordance with this factor weighs in favor of detention.

B. Weight of the Evidence Against the Defendant (18 U.S.C. § 3142(g)(2))

1. On October 2, 2007, the Defendant attempted to enter the United States at the Tecate Port of Entry as the driver and sole occupant of a vehicle from which eight packages containing approximately 12.05 kilograms of methamphetamine were recovered from a non-factory compartment in the rear bumper.

2. Although it is the least important factor, the evidence against the Defendant sustains a finding of probable cause to conclude that the Defendant committed the instant offense.

3. The evidence presented in accordance with this factor weighs in favor of detention.

C. History and Characteristics of the Defendant (18 U.S.C. § 3142(g)(3))

1. The evidence presented regarding the Defendant's character weighs neither in favor of detention nor bail.

2. The evidence presented regarding the Defendant's physical and mental condition weighs neither in favor of detention nor bail.

1 forth in 18 U.S.C. § 3142(e), that there is no condition or combination of conditions that the Court
2 could set that will reasonably assure the appearance of the Defendant as required.

3 C. The Court finds, by a preponderance of evidence, that the United States has carried
4 its burden of establishing that no condition or combination of conditions will reasonably assure
5 the appearance of the Defendant as required.

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III.

ORDER

IT IS HEREBY ORDERED that the Defendant be detained pending trial in this matter.

IT IS FURTHER ORDERED that the Defendant be committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The Defendant shall be afforded reasonable opportunity for private consultation with counsel.

While in custody, upon order of a court of the United States or upon the request of an attorney for the United States, the person in charge of the correctional facility shall deliver the Defendant to the United States Marshal for the purpose of an appearance in connection with a court proceeding or any other appearance stipulated to by defense and government counsel.

THIS ORDER IS ENTERED WITHOUT PREJUDICE.

IT IS SO ORDERED.

DATED: October 12, 2007


HONORABLE RUBEN B. BROOKS
United States Magistrate Judge

Prepared by:

/s/ Caroline Han
CAROLINE P. HAN
Assistant United States Attorney

cc: Holly Hanover, Counsel for Defendant